CIA Debate: A Question of Prerogatives

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Toward the end of the hearing, a senator from New York began ridiculing the White House for forgetting its promises to the voters. After the session was over, a CIA lawyer strode up to the committee's staff director and lectured him about the law until he grew red with anger.

The debate over the CIA charter, and particularly its requirements for reporting to Congress, is beginning to take on a harsh edge, with each side accusing the other of trying to change rules of the game.

The biggest controversy involves the question of "prior notices" to Capitol Hill of covert operations and

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other significant intelligence activities. President Carter has come out strongly against such a provision. The Senate Intelligence Committee is insisting on it.

With customary dramatic flair, Sen. Daniel Patrick Moynihan (D-N.Y.) began wondering aloud at a CIA charter hearing Thursday just who got elected in 1976 when Jimmy Carter campaigned against "the veils of secrecy" in Washington and Walter Mondale promised reform of the CIA.

Moynihan recalled one meeting at the White House in the fall of 1978 when Mondale, a former member of the Senate Intelligence Committee, walked in to review a largely permissive draft charter that had been put together by the lawyers for the various intelligence agencies.

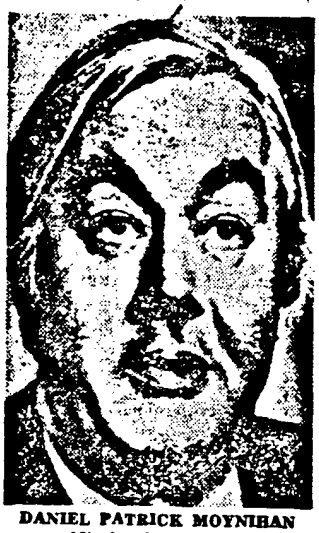
"The vice president looked sternly at the four wretches assembled and said, 'You fellows don't seem to understand who won the last election.' A member of the Church committee [the first Senate Intelligence Committee headed by Frank Church of Idaho] is now vice president," Moynihan recounted.

Now, just 18 months later, Moynihan observed, the White House is refusing to go along with a law that would require the executive branch to share all its secrets with the Senate and House intelligence committees. "Now," Moynihan said, "it seems that we don't understand who won the last election . . . What ever happened to those fine brave ideals that the vice president brought into office?"

The reaction from the administration has been just as pointed. One White House aide close to the charter debate dismissed the committee's position as "juvenile and groundless." He pointed out that the House and Senate Intelligence committees are usually told ahead of time all intelligence activities of any importance and that the president intends to continue the practice. Carter, it is said, just doesn't want that nailed down into law.

"They [the intelligence committees] haven't got one ground for complaint to date," this official said. "They say, 'well, what happens if we have a new president? What if we get another Nixon?' My answer to that is, 'What if we have another Joe McCarthy?'"

'It seems we're picking at gnats that have turned into watermelons.'



DANIEL PATRICK MOYNIHAN
. . . ridicules the White House

STANSFIELD TURNER
. . . opposes "prior notice" law

The debate, in short, is one over checks and balances, a question of presidential prerogatives vs. the power of congressional oversight.

CIA Director Stansfield Turner has argued against a law requiring prior notice on grounds there are some operations that are just too sensitive, that human lives might be endangered if Congress were told and word leaked out.

Coincidentally, the one big operation that the select committees weren't told about—for fear of leaks—leaked out anyway. It was still a success because the outsiders who learned of it kept the secret themselves.

This was the so-called "Canadian caper" involving the escape in January of six American diplomats from Iran after they hid for three months in the Canadian Embassy in Tehran. Jean Pelletier, the Washington correspondent of Montreal's La Presse, knew their whereabouts. So did Newsweek and the Washington bureau of NBC News, among others.

The Senate and House Intelligence committees, meanwhile, were kept in the dark. The chairman of the Senate committee, Birch Bayh (D-Ind.), who said several weeks ago that he knew of only one exception to the "prior notice" practice, confirmed Friday that "we didn't know about the Canadian situation."

Would it have added to the hazards to have told the traditionally close mouthed committees when journalists were already aware of the operation? "That's a very tough question," allowed one CIA official.

Still, the debate rages on. Some CIA aides have suggested President Carter feels so strongly about the issue that he will veto any charter containing a prior notice rule. But White House aides insist he hasn't addressed the question of a veto yet.

Some members of the Senate committee and their aides feel they have already made more than enough concessions to the CIA and the administration on the charter legislation. The bill introduced Feb. 8 by Sen. Walter D. Huddleston (D-Ky.) gives the CIA an unprecedented exemption from the Freedom of Information Act, provides criminal penalties for unauthorized disclosure of the names of CIA operatives, and repeals the 1974 Hughes-Ryan amendment that governs covert operations.

Under Hughes-Ryan, no covert activity may be undertaken "unless and until" the president finds it important to the national security and reports the undertaking, "in a timely fashion . . . to the appropriate committees of the Congress."

The CIA has complained for years that this requires disclosure to eight committees involving 200 members of Congress and their staffs, but the number has been exaggerated. As Rep. Les Aspin (D-Wis.), chairman of the House Intelligence oversight subcommittee has pointed out, only three of the eight committees systematically review covert actions and only a few members of the other committees are notified.

Moynihan argues that Hughes-Ryan should be amended in any case because it is ambiguous and the "unless and until" clause could be read as requiring prior notice now. In practice, the administration has, as a general rule, been supplying prior notice anyway, under a 1978 Carter executive order. It provides for the Senate and House Intelligence committees to be kept informed by the intelligence agencies of "any significant anticipated activities."

The administration, however, wants to keep that clause, "significant anticipated activities," from becoming law. It proposes only to keep the two intelligence committees—and no others—"fully and currently informed" of its undertakings.

At one point during Thursday's hearing, Bayh expressed his exasperation over the dispute.

"It seems to me we're picking at gnats that have turned into the size of watermelons," he told CIA Deputy Director Frank Carlucci. "We're making a great big deal out of this. I think you can include 'significant anticipated activities' in a manner that does not breach security."

Carlucci didn't quite agree. After the hearing, a CIA lawyer marched up to the committee's staff director, William Miller, and began expounding on the niceties of the issue until the normally unflappable Miller flushed and barked at him: "That's why we're putting it in the statute."

At this point Bayh said he doesn't see much point in further argument. He said he did not think it wise to rely on the good will of future administrations instead of law.

"We've just got to go ahead and see where the votes are," he said in a telephone interview. He said no one on the intelligence committees was trying to dispute the president's leadership in foreign policy or to assert a veto power over covert actions. But if the White House keeps insisting that the president's "constitutional authority" is at stake, he said, Congress might start asserting its constitutional authority over appropriations.

"If we want to play that game," he said, "we can say, 'No knowledge, no money.' We still have the right to control the purse strings."